



ATTORNEY GENERAL OF TEXAS  
G R E G A B B O T T

March 9, 2005

Ms. Karen Rabon  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2005-02024

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219112.

The Office of the Attorney General (the "OAG") received a request for the special commissioners' hearing transcripts for condemnation cases that are still pending trial. The OAG explains that it is representing the Texas Department of Transportation (the "department") in several eminent domain actions as part of the department's acquisition of the right-of-way for the construction of State Highway 130. The OAG claims the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.105 of the Government Code and Rule 192.3 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

The OAG explains that a special commissioners' hearing is not a judicial proceeding. However, we understand that, like a judicial proceeding, a special commissioners' hearing is open to the public. "[O]fficial records of the public proceedings of a governmental body are among the most open of records." Open Records Decision No. 221 (1979). Thus, the OAG may not withhold the transcripts of hearings that are open to the public under sections

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

552.103 and 552.105. *See* Gov't Code § 552.007 (information that has been made available to the public must be made available to any person); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions may be waived), 473 (1987) (section 552.103 may be waived); *cf. Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 579 (Tex. 1992) (the law cannot recall information once it is in the public domain as it was revealed in a trial proceeding); *Ex parte Foster*, 71 S.W. 593, 596 (Tex. Crim App. 1903) (trial court is without power to prohibit the publication of testimony presented during trial).

The OAG also claims that section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.3 makes the transcripts confidential. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Rules of Civil Procedure do not fall within section 552.101 as they are not constitutional law, statutory law, or a judicial decision. Open Records Decision Nos. 676 (2002), 575 (1990) (section 552.101 does not encompass discovery privileges); *but see In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (the Texas Rules of Civil Procedure and Texas Rules of Evidence make information confidential for purposes of section 552.022 of the Government Code). In addition, the Public Information Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); Gov't Code § 552.006 (chapter 552 does not authorize withholding public information or limit availability of public information to the public except as expressly provided by chapter 552). The rule of civil procedure to which you cite regulates discovery in court proceedings and not the availability of information under the Public Information Act. Thus, the OAG may not withhold the transcripts under Rule 192.3. The OAG must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

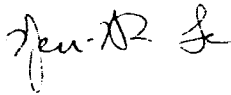
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 219112

Enc. Submitted documents

c: Ms. Kate Alexander  
Staff Writer  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767  
(w/o enclosures)

Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483  
(w/o enclosures)